IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.470 OF 1982

THE HON'BLE MR. JUSTICE Y.B. BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. S.R. Shah, advocate for the petitioners.
Mr. B.H. Mehta, advocate for respondent no.1 and 3.
Mr. N.S. Sheth, advocate for respondent no.2.

CORAM: Y.B. BHATT J.
Date of Decision: 05-12-1995

JUDGEMENT

1. The present revision is under section 29(2) of the Bombay Rent Act (hereinafter referred to as 'the said Act'), filed by the original plaintiffs-landlords, wherein the respondent nos.1 and 2 are the original defendants-tenants and respondent no.3 is the original defendant no.3, the alleged sub-tenant.

2. The landlords had filed a suit against the tenants and the alleged sub-tenant for a decree of eviction against them, on various grounds available to them under the said Act viz. that the tenants were in arrears of rent for more than six months, they had illegally sublet the premises in favour of the third defendant, that the tenants had committed waste of the suit premises and had constructed a permanent structure thereon without the written consent of the landlords, and that the landlords required the suit premises for their reasonable and bonafide requirements.

3. The defendant nos.1 and 3 filed a joint written statement vide Exh.17 contesting the averments made in the suit plaint, and also raised a dispute as to standard rent. In the written statement they also contended that the landlords had refused to accept the rent as and when tendered to the landlords and that is how the arrears came to be accumulated. The tenants further contended that prior to the suit notice, a sum of Rs.600/- was also remitted by money order which was refused by the landlords.

4. It is pertinent to note that this tender of the arrears of rent was prior to the suit notice. There is no contention or other evidence on record to show that there was any tender of the arrears after the suit notice or within 30 days of the suit notice.

5. The trial court, after raising the issues at Exh.19 and after recording evidence in the matter, ultimately found against the landlords on all the relevant issues, and dismissed the suit for possession on all the grounds.

6. The landlords, being aggrieved by the dismissal of the suit, preferred an appeal under section 29(1) of the said Act.

7. From para 8 of the appellate judgement it appears that other grounds for claiming possession were not pressed in appeal, except the ground of arrears. Under the circumstances the lower appellate court has only dealt with that ground for possession. In any case, learned counsel for the petitioners-landlords has specifically confined himself and his contentions in the present revision to the ground of arrears, and for this reason also, that is the only contention examined by me in the present revision.

8. At the outset it may be stated that although on the facts of the case it appears that the case would be governed under section 12(3)(a) of the said Act, I do not propose to discuss this aspect of the matter in greater detail inasmuch

as this contention has not been taken on behalf of the landlords either in the trial court nor before the lower appellate court. For this reason, learned counsel for the petitioners-landlords has fairly submitted that he would press the revision by accepting the position that the case would be governed by section 12(3)(b) of the said Act.

9. Before examining the facts of the case it would be relevant to examine the ratio laid down by the Supreme Court in the case of MRANALINI VS. BAPALAL MOHANLAL (19 GLR 1090). The aforesaid decision specifically lays down the conditions under which the tenant can avail himself of the protection of section 12(3)(b) of the said Act. In this context it is observed (after discussing the ratio laid down in the case of Ganpat Ladha Vs. Shashikant Vishnu Shinda, reported in 19 GLR 502) that the provisions of clause (b) of section 12(3) of the said Act are mandatory and must be strictly complied with by the tenant during the pendency of the suit and appeal, if the landlord's claim for eviction on the ground of default in payment or deposit of arrears of rent is to be defeated. It also lays down the principle that the tenant must comply with all the conditions specified in clause (b) of section 12(3) in order to avail himself of the protection. If he fails to satisfy all the conditions specified in clause (b), the court has no jurisdiction except to pass a decree for eviction.

10. I may now examine the facts of the case in the light of the aforesaid decision.

11. As observed in para 13 of the appellate judgement, there is no dispute that the tenant was in arrears or rent from 1st August 1973. The issues were framed on 3rd October 1978. Thus, the arrears on the date of framing of the issues (which would be the first day of hearing, as contemplated by clause (b)) would be for 62 months. The contractual rent as also the standard rent is admittedly Rs.20/- per month. Thus, the rent due and payable on the date of framing of the issues would be Rs.1240/-.

12. Now I may examine what is the actual amount deposited in the court as against the dues of Rs.1240/-. In this context the only observation made by the lower appellate court, which is a terse and casual observation without application of mind, is found in para 13 of the judgement. This observation reads as under:

> "If we refer to the schedule exh.12, then Rs.700/- were deposited on 7-10-76 and then the same has been deposited from time to time."

This casual observation seeks to cover both the deposits made upto the date of framing of the issues, as also the deposits made after framing of the issues in the trial court, and the deposits made during the pendency of the appeal.

13. When the first part of the aforesaid observation is examined carefully with reference to the schedule of deposits (Exh.12), it is found that only 2 deposits had been made prior to 3rd October 1978 which is the date of framing of the issues. The first deposit is made on 20th July 1976 being Rs.700/-, and the second deposit is made on 12th September 1978 which is for Rs.240/-. Obviously, therefore, the lower appellate court was grossly in error, and has factually misread the admitted schedule of deposits (Exh.12) in observing that Rs.1400/- had been deposited upto the date of framing of the issues. Referring back again to the above quoted observation of the lower appellate court, the second deposit of Rs.700/- which has been noted by the lower appellate court as having been made on 7th October 1976, is in fact not a deposit at all, but is a debit entry under column no.5 of the schedule, evidencing withdrawal of the amount by the landlords. It is for this reason that column no.5, which shows the balance on that day viz. 7th October 1976, reads "nil". It is very clear that even a casual look at the said schedule would have revealed the true state of affairs, had the lower appellate court applied even the slightest mind to it. Clearly, therefore, the total amount deposited upto the date of framing of issues was only Rs.940/- and not Rs.1400/-. Obviously, therefore, there was a clear shortfall in making the proper deposit of arrears of rent on the date of framing of the issues. It is, therefore, obvious that the first condition contemplated by clause (b) of section 12(3) of the said Act has not been satisfied by the tenants.

14. It must be noted at this stage that in the present revision, the case would be one covered by section 12(3)(b) of the said Act as it stood prior to the amendment of 1985. Under the circumstances the tenant was required to make the deposits "regularly" in the court as and when such rent became due, after complying with the first condition viz. making a deposit of the entire arrears due and payable upto the date of the framing of the issues. The second aspect of the matter is that the tenant was also required to make regular deposits during the period of suit, as well as appeal.

15. It is also clear from the schedule of payments (Ex.12) that the tenant has failed to satisfy even the second condition. Only two instances would suffice: (i) the tenant has deposited Rs.300/- on 15th December 1978, and that the

next deposit of Rs.250/- followed as late as 19th September 1979, i.e. after a gap of more than 8 months and (ii) the tenant made a deposit of Rs.100/- on 3rd June 1980 and the next deposit of Rs.200/- followed on 14th May 1981 at an interval of more than 11 months. Under no circumstances can such intervals be regarded as "regular". In this context of irregular payment/deposit, it has been pointed out by the Supreme court in Mranalini's case (supra) that "deposits made at intervals of 2, 3 or 4 months cannot be said to be regular deposits", so as to enable the tenant to avail himself of the protection of section 12(3)(b) of the said Act.

16. It is, therefore, apparent and obvious from the facts of the case that the lower appellate court has clearly failed to apply its mind to the schedule of payments at Exh.12 and has grossly misinterpreted the same. On account of such gross misinterpretation, the resultant judgement and order amounts to a perversity in law. The same, therefore, requires to be quashed and set aside.

17. In the premises aforesaid, the lower appellate court as also the trial court were clearly in error in concluding that the tenants are entitled to the protection of section 12(3)(b) of the said Act and consequently holding that the landlords are not entitled to a decree for eviction against the tenants. Under the circumstances the impugned judgements and decrees of the trial court as also of the lower appellate court are quashed and set aside. Consequently the landlords' suit for eviction of the tenants is decreed.

18. Since the defendant no.3 claims through defendant nos.1 and 2, decree for eviction shall also be passed against him.

19. Accordingly the present revision stands allowed and rule is made absolute with costs.

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